

DOCKET NO. 2003-52-C - ORDER NO. 2003-431

IN RE: Application of Teleglobe USA Inc. and
Teleglobe USA LLC for Approval of
Assignment of Assets and
Issuance/Transfer of Certificate of Public
Convenience and Necessity and Related
Transactions and for Alternative
Regulation.

) ORDER GRANTING
) MOTION FOR EXPEDITED
) REVIEW AND APPROVAL
) OF ASSIGNMENT OF
) ASSETS AND
) ISSUANCE/TRANSFER OF
) CERTIFICATE OF PUBLIC
) CONVENIENCE AND
) NECESSITY AND
) RELATED
) TRANSACTIONS AND
) MODIFIED ALTERNATIVE
REGULATION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Joint Application filed by Teleglobe USA, Inc. (Old Teleglobe) and Teleglobe USA, LLC (New Teleglobe) for approval of certain transactions arising from the sale of Old Teleglobe’s telecommunications business out of bankruptcy to TLGB Corporation (TLGB). More specifically, Old Teleglobe and New Teleglobe request approval from the Commission for the following: (i) to transfer and assign Old Teleglobe’s South Carolina assets to New Teleglobe; (ii) to transfer to New Teleglobe Old Teleglobe’s Certificate of Public Convenience and Necessity (CPCN) issued by the Commission to provide long distance services as an interexchange carrier in South Carolina; and (iii) to subsequently transfer control (through a 100% stock sale) of New Teleglobe to TLGB. Additionally, New Teleglobe requests that the Commission grant

the Company alternative regulation of its activities in South Carolina as granted in Commission Order Numbers 95-1734 and 96-55. The Application was filed pursuant to S.C. Code Ann. Section 58-9-310 (Supp. 2002) and the applicable regulations of the Commission.

Old Teleglobe is a Delaware corporation located at 11495 Commerce Park Drive, Reston, Virginia, 20191, that provides facilities-based and resold international telecommunications services on a wholesale and retail basis throughout the United States. In South Carolina, Old Teleglobe is authorized to provide interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity granted by the Commission in Order No. 1999-496 in Docket No. 98-646-C on July 12, 1999. Old Teleglobe, however, does not currently provide intrastate services to any customers in South Carolina. Old Teleglobe is an indirect, wholly-owned subsidiary of Teleglobe, Inc., a provider of international telecommunications services in Canada and various other countries. Teleglobe, Inc. is a corporation organized under the laws of Ontario, Canada.

On May 15, 2002, Teleglobe, Inc. and certain of its affiliates, including Old Teleglobe (collectively, the “Canadian Debtors”), applied for an order in the Ontario Superior Court of Justice pursuant to the Companies’ Creditors Arrangement Act of Canada (“CCAA”), R.S.C. 985, c. C-36, commencing a restructuring proceeding and providing Teleglobe, Inc. and its subsidiaries protection against creditor actions while they formulated a restructuring plan. On May 28, 2002, Old Teleglobe and Teleglobe, Inc.’s other United States subsidiaries filed a voluntary Application for relief under

Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Sections 101-1330, in the U. S. Bankruptcy Code for the District of Delaware. The Chapter 11 cases of Old Teleglobe and the other U.S. subsidiaries of Teleglobe, Inc. (the U.S. Chapter 11 Proceedings and together with the CCAA Proceedings, the Bankruptcy Proceedings) have been consolidated for procedural purposes and are being administered jointly.

As part of the Bankruptcy Proceedings, Teleglobe, Inc., Old Teleglobe, and their affiliates are undergoing a reorganization (the Teleglobe Reorganization) which, among other steps, involves the transfer and sale of Old Teleglobe's telecommunications assets and businesses in the United States. On October 10, 2002, the Bankruptcy Court entered a Sale Order finding that TLGB's affiliates had submitted the highest and best offer for the U.S. assets of Teleglobe, Inc. and its U.S. debtor subsidiaries (the Sale Order). The Sale Order also authorized Teleglobe, Inc. and its U.S. subsidiaries, including Old Teleglobe, to consummate the transaction subject to receipt of required regulatory approvals.

New Teleglobe is a newly-formed limited liability company organized under the laws of the State of Delaware for the purpose of carrying out the proposed transaction. Currently, New Teleglobe is a wholly-owned subsidiary of Old Teleglobe. Following consummation of the proposed transaction, New Teleglobe will be a wholly-owned subsidiary of TLGB. New Teleglobe, as the successor of Old Teleglobe, will acquire substantially all of Old Teleglobe's assets, as well as much of the experience of its personnel in providing telecommunications services.

TLGB is a Delaware holding company that, after consummation of the proposed transaction, will be the direct parent company of New Teleglobe. TLGB is an indirect wholly-owned subsidiary of Teleglobe International Holding Ltd. (TIH), which is majority owned by four investment funds that are affiliated with Cerberus Capital Management, LP (Cerberus). Cerberus is a private equity fund based in New York that manages over \$8 billion in assets, including investments in the technology and telecommunications sectors.

A description of the proposed transaction is discussed in the Application. In furtherance of the Teleglobe Reorganization, on September 19, 2002, Teleglobe, Inc., together with certain of its subsidiaries, including Old Teleglobe, executed a purchase agreement (the Purchase Agreement) and certain ancillary agreements for the sale of, among other things, Old Teleglobe's assets. Pursuant to those agreements, Old Teleglobe has formed a limited liability company under the laws of Delaware, New Teleglobe, as a wholly-owned subsidiary of Old Teleglobe. Immediately prior to the closing of the proposed transaction, Old Teleglobe will assign substantially all of its assets, including its South Carolina operating assets to New Teleglobe. At closing, Old Teleglobe will then transfer 100% of the stock of New Teleglobe to TLGB. As a result of the transaction, New Teleglobe will succeed to the current business and operations of Old Teleglobe and will exist as a wholly-owned subsidiary of TLGB.

By letter dated March 10, 2003, the Commission's Executive Director instructed the Applicants to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to

provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The Applicants filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

MOTION FOR EXPEDITED REVIEW

As part of their Application, the Applicants requested expedited review and disposition of the Application in order that the Applicants could consolidate their respective operations as soon as possible. In furtherance of their request for expedited review, the Applicants filed verified testimony about the transaction with the Application. Once the return date expired with no intervention or opposition, the Commission Staff brought the matter to the Commission for consideration.

Upon consideration of the Applicants' request for expedited review, the Commission finds that expedited review should be granted. By their request, the Applicants waive their right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicants make a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony of Mr. Charles A. Tievsky, Assistant General Counsel of

Teleglobe USA, LLC and Teleglobe USA, Inc. during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY

Mr. Tievsky described and supported the Application of Teleglobe USA, Inc., Teleglobe USA, LLC, and TLGB Corporation (Applicants) for approval of the Assignment of Assets and Issuance/Transfer of Certificate of Public Convenience and Necessity and Related Transactions and for Alternative Regulation in South Carolina. As Assistant General Counsel of Teleglobe USA, LLC and Teleglobe USA, Inc., Mr. Tievsky represents Teleglobe's interests before regulators and policy makers in the United States, the Americas, Europe, and Asia. Mr. Tievsky is responsible for providing regulatory advice in connection with commercial transactions and strategic planning, and in developing and advocating Teleglobe's public policy positions with respect to carrier issues, the development of the Internet, and promoting international trade in telecommunications services. The testimony reveals further that Mr. Tievsky is responsible for securing regulatory approvals in connection with the sale of Teleglobe's assets and operations in conjunction with Teleglobe's restructuring pursuant to Chapter 11 of the U.S. Bankruptcy Code. Mr. Tievsky is a graduate of Washington University Law School in St. Louis and he is a member of the Virginia State Bar and the District of Columbia Bar. Prior to joining Teleglobe in 1995, Mr. Tievsky was Senior Regulatory Counsel with Cable & Wireless North America and he has held positions in government and private law practice.

The Applicants are seeking approval of the *pro forma* assignment of Old Teleglobe's South Carolina assets to New Teleglobe, and the subsequent transfer of control of New Teleglobe to TLGB. The Applicants are also requesting that Old Teleglobe's Certificate of Public Convenience and Necessity to provide long distance services as an interexchange carrier in South Carolina be transferred to New Teleglobe and for New Teleglobe to be granted Alternative Regulation.

Mr. Tievsky described New Teleglobe and Old Teleglobe. According to the testimony, New Teleglobe is a newly-formed limited liability company organized under the laws of the State of Delaware for the purpose of carrying out the transaction described in the Application and the prefiled testimony. Currently, New Teleglobe is a wholly-owned subsidiary of Old Teleglobe. Following consummation of the proposed transaction, New Teleglobe will be a wholly-owned subsidiary of TLGB. New Teleglobe, as the successor of Old Teleglobe, will acquire substantially all of Old Teleglobe's assets, as well as much of the experience of its personnel in providing telecommunications services. New Teleglobe's principal place of business will be 1000 de La Gauchetiere West, Montreal, Quebec H3B 4X5, Canada.

The record reveals further that Old Teleglobe has previously obtained a Certificate of Public Convenience and Necessity from the Commission. Thus, Old Teleglobe's qualifications to provide telecommunications services are a matter of public record. New Teleglobe, as the successor of Old Teleglobe, will obtain Old Teleglobe's assets and operations, as well as much of the substantial knowledge and expertise of Old Teleglobe in providing telecommunications services. At the same time, the proposed

transaction will give New Teleglobe an improved capital structure that will ensure that New Teleglobe will be able to compete effectively in South Carolina.

Old Teleglobe is a Delaware corporation located at 11495 Commerce Park Drive, Reston, Virginia, 20191, that provides international facilities-based and resold telecommunications services on a wholesale and retail basis throughout the United States. In South Carolina, Old Teleglobe is authorized to provide interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity granted by the Commission in Order No. 1999-496 in Docket No. 98-646-C on July 12, 1999. Old Teleglobe, however, does not currently provide intrastate services to customers in South Carolina. Old Teleglobe is an indirect, wholly-owned subsidiary of Teleglobe, Inc., a provider of international telecommunications services in Canada and various other countries. Teleglobe, Inc. is a corporation organized under the laws of Canada.

On May 15, 2002, Teleglobe, Inc. and certain of its affiliates, including Old Teleglobe (collectively, the Canadian Debtors), applied for an order in the Ontario Superior Court of Justice pursuant to the Companies' Creditors Arrangement Act of Canada (CCAA), R.S.C. 985, c. C-36, commencing a restructuring proceeding and providing Teleglobe, Inc. and its subsidiaries protection against creditor actions while they formulate a restructuring plan.

On May 28, 2002, Old Teleglobe and Teleglobe, Inc.'s other U.S. subsidiaries filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101-1330, in the U.S. Bankruptcy Court for the District of Delaware.

Old Teleglobe's and the other U.S. subsidiaries of Teleglobe, Inc.'s Chapter 11 cases (the "US Chapter 11 Proceedings" and together with the CCAA Proceedings, the "Bankruptcy Proceedings") have been consolidated for procedural purposes and are being administered jointly.

TLGB Corporation is a Delaware holding company that, after consummation of the proposed transaction, will be the direct parent company of New Teleglobe. TLGB is an indirect wholly-owned subsidiary of Teleglobe International Holding Ltd. (TIH), a newly-formed Bermuda corporation. The majority owners of TIH are four investment funds that are affiliated with Cerberus Capital Management, LP (Cerberus). Cerberus is a private equity fund based in New York that manages over \$8 billion in assets, including investments in the technology and telecommunications sectors. The Cerberus funds are controlled by Stephen Feinberg, a U.S. citizen who is CEO of Cerberus.

Each of the four Cerberus funds will have at least a 10%, but less than a 40%, ownership interest in TIH. The precise ownership interests of each of the funds will not be known until shortly before closing of the proposed transaction. Collectively, however, the funds will have a greater than 50% ownership interest in TIH, and therefore will be the majority owners and controlling entities with respect to TIH.

Mr. Tievsky also explained the Transaction. On September 19, 2002, Teleglobe, together with certain of its subsidiaries, including Old Teleglobe, and TLGB's affiliate, TLGB Acquisition, LLC, executed a purchase agreement (the Purchase Agreement) and certain ancillary agreements. Pursuant to those agreements, Old Teleglobe formed a limited liability company under the laws of Delaware, New Teleglobe, as a wholly-

owned subsidiary of Old Teleglobe. Immediately prior to the closing of the proposed transaction, Old Teleglobe will assign substantially all of its assets, including its South Carolina operating assets to New Teleglobe. At closing, Old Teleglobe will then transfer 100% of the stock of New Teleglobe to TLGB. As a result of the transaction, New Teleglobe will succeed to the current business and operations of Old Teleglobe and will exist as a wholly-owned subsidiary of TLGB. The Applicants expect to consummate the proposed transaction as soon as all of the necessary regulatory approvals are obtained.

Mr. Tievsky also described how New Teleglobe has demonstrated its fitness to provide service in South Carolina. According to the record, Old Teleglobe is technically, managerially, and financially qualified to provide service in South Carolina. New Teleglobe, as the successor to Old Teleglobe, will acquire much of Old Teleglobe's operating assets as well as much of the experience and expertise of Old Teleglobe's personnel in providing telecommunications services. Mr. Tievsky testified that Old Teleglobe's technical and managerial qualifications to provide telecommunications service are a matter of public record, having previously obtained a Certificate of Public Convenience and Necessity from the Commission. New Teleglobe provided the Commission with information on its financial ability in its Application, as well as in additional filings.

According to the Application, Commission approval of the proposed Agreement is in the public interest because it will lead to the emergence of a stronger and better financed competitor in the South Carolina telecommunications market. According to the testimony, under its new ownership, New Teleglobe will be able to operate in a more

efficient and economical manner and will have better access to capital needed to maintain and grow New Teleglobe's competitive telecommunications business. Mr. Tievsky testified further that TLGB's acquisition of Teleglobe's business will permit New Teleglobe to continue to provide the high quality services that Old Teleglobe currently offers to its customers throughout the United States. Moreover, the transaction will not adversely affect South Carolina customers.

In its Application, New Teleglobe states that it will adopt the current effective tariffs of Old Teleglobe in the State of South Carolina upon certification and prior to commencement of service in its own name. Further, New Teleglobe requests a waiver of Regulation 103-631 to publish and distribute local exchange directories. According to the Application, New Teleglobe will enter into an agreement with BellSouth Telecommunications, Inc. (BellSouth) to include the names of its customers in BellSouth's directories. Moreover, New Teleglobe requests a waiver of Regulation 103-610 that all records under the rules be kept within the State. New Teleglobe proposes to maintain its records at its principal offices but will make records available to the Commission upon request. Additionally, New Teleglobe requests that it be exempt from any record keeping policies that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The Application indicates that New Teleglobe will not be subject to rate base regulation and therefore New Teleglobe requests Commission approval to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP). New Teleglobe also seeks alternative regulation of its activities as granted other interexchange carriers by previous

Commission orders (See Docket No. 95-661-C, Petition of AT&T Communications of the Southern States, Inc., Orders No. 95-1734 and 96-55).

Upon review and consideration of the Application, the verified testimony of Mr. Tievsky, and the applicable law, the Commission hereby issues its findings of fact:

FINDINGS OF FACT

1. Old Teleglobe is a Delaware corporation that provides international facilities-based and resold telecommunications services on a wholesale and retail basis throughout the United States. Old Teleglobe is authorized to provide in South Carolina interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity granted by the Commission in Order No. 1999-496 in Docket No. 98-646-C on July 12, 1999. Old Teleglobe is an indirect, wholly-owned subsidiary of Teleglobe, Inc., a provider of international telecommunications services in Canada and various other countries. Teleglobe, Inc. is a corporation organized under the laws of Canada.

2. New Teleglobe is a newly-formed limited liability company organized under the laws of the State of Delaware for the purpose of carrying out the transaction described in the Application. Currently, New Teleglobe is a wholly-owned subsidiary of Old Teleglobe. Following consummation of the proposed transaction, New Teleglobe will be a wholly-owned subsidiary of TLGB. New Teleglobe, as the successor of Old Teleglobe, will acquire substantially all of Old Teleglobe's assets, as well as much of the experience of Old Teleglobe's personnel in providing telecommunications services.

3. On May 28, 2002, Old Teleglobe and Teleglobe's Inc.'s other U.S. subsidiaries filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101-1330, in the U.S. Bankruptcy Court for the District of Delaware. Old Teleglobe's and the other U.S. subsidiaries of Teleglobe, Inc.'s Chapter 11 cases have been consolidated for procedural purposes and are being administered jointly.

4. Teleglobe, Inc. together with certain of its subsidiaries, including Old Teleglobe, and TLGB's affiliate, TLGB Acquisition, LLC executed a purchase agreement and certain ancillary agreements. Pursuant to those agreements, Old Teleglobe formed a limited liability company under the laws of Delaware, New Teleglobe, as a wholly-owned subsidiary of Old Teleglobe. Prior to the closing of the proposed transaction, Old Teleglobe will assign substantially all of its assets, including its South Carolina operating assets to New Teleglobe. At the closing, Old Teleglobe will transfer 100% of the stock of New Teleglobe to TLGB. Thereafter, New Teleglobe will succeed to the current business and operations of Old Teleglobe and will exist as a wholly-owned subsidiary of TLGB.

5. Old Teleglobe is technically, managerially, and financially qualified to provide service in South Carolina. New Teleglobe, as the successor to Old Teleglobe, will acquire much of Old Teleglobe's operating assets as well as much of the experience and expertise of Old Teleglobe's personnel in providing telecommunications services.

6. The Commission finds that the proposed transaction for the *pro forma* assignment of Old Teleglobe's South Carolina assets to New Teleglobe and the

subsequent transfer of control of New Teleglobe to TLGB should be approved. Further, Old Teleglobe's Certificate of Public Convenience and Necessity to provide long distance services as an interexchange carrier in South Carolina should be transferred to New Teleglobe and New Teleglobe should be granted alternative regulation as modified by Commission Order No. 2001-997.

7. The Commission finds that the proposed transaction is in the public interest as it will lead to the emergence of a stronger and better-financed competitor in the South Carolina telecommunications market. Under its new ownership, New Teleglobe will be able to operate in a more efficient and economical manner and will have better access to capital needed to maintain and grow New Teleglobe's competitive telecommunications business. Moreover, TLGB's acquisition of Teleglobe's business will permit New Teleglobe to continue to provide the high quality services that Old Teleglobe currently offers to its customers throughout the United States.

Based on the above Findings of Fact, the Commission hereby determines that the Application filed by Old Teleglobe and New Teleglobe for approval of assignment of assets and issuance/transfer of the Certificate of Public Convenience and Necessity will not adversely affect the public interest nor will the conversion adversely affect the provision of telecommunications services in South Carolina, and therefore, the Commission approves the requested asset transfer.

IT IS THEREFORE ORDERED THAT:

1. The Joint Application of Old Teleglobe and New Teleglobe for the assignment of Old Teleglobe's South Carolina assets and Certificate of Public

Convenience and Necessity to New Teleglobe is hereby approved. Further, the transfer of control of New Teleglobe to TLGB is hereby approved.

2. With respect to New Teleglobe's business service offerings, operator assistance, and customer network offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to New Teleglobe also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to New Teleglobe.

3. We grant the Company's request for a waiver of Regulation 103-631 as New Teleglobe will enter into an agreement with BellSouth to include the names of its customers in BellSouth's directories. Next, we grant New Teleglobe's request for a waiver of Regulation 103-610 so that New Teleglobe can keep its records at its principal offices however, New Teleglobe shall make its records available to the Commission upon

request. We also grant New Teleglobe's request to maintain its books in accordance with GAAP.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)